IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9373 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

UV PATEL COLLEGE OF ENGINEER- ING

Versus

ALL INDIA COUNCIL FOR TECHNICAEDUCATION

Appearance:

1. Special Civil Application No. 9373 of 2002

MR DC DAVE for Petitioner No. 1

MR DN PATEL for Respondent No. 1

Mr.Sompura,AGP for Respondent No. 2-3

CORAM : MR.JUSTICE JAYANT PATEL

Date of decision: 04/10/2002

ORAL JUDGEMENT

Rule. Mr.D.N.Patel for respondent No.1 and

Mr.Sompura, Ld.AGP for respondent Nos 2 & 3 appear and waive service of rule. With the consent of parties matter is taken up for final hearing today.

2. In this petition the questions involved are, more or less, same as they were in the Spl.C.A.No.6179/02 which came to be disposed of by this court as per judgment dated 28.8.02. The only distinguishing feature is that the intake capacity of the petitioner in the present case is 360 and the same is reduced to 323. Pursuant to the notice issued by this court for final disposal on behalf of respondent No.1, Dr.Y.T.Krishna Gowda has filed affidavit in reply and at para 5 it has been mentioned as under:

> "5. I submit that the petitioner is running a degree engineering institution in the name and style of Shri U.V.Patel College of Engineering, Dist.Mehsana. I say that three member Expert Committee considered extension of approval/increase in take/addition course for the academic year 2002-2003 in its meeting held on 21.5.02. I say that the committee had recommended reduction in the existing intake for the academic year 2002-03 due to the reason that the institute had admitted excess students in the year 2001-02 but the institute had actually admitted 397 students thereby admitting 37 excess students during the year 2001-02. As a policy decision the Expert Committee had reduced the same number of seats i.e. 37 seats from the actual sanctioned intake i.e. 360 to 323 for the academic year 2002-03."

Further at para 6 it has been mentioned that the recommendations of the Regional Committee were placed before the EC-Sub Committee and the decision is approved.

3. In view of the above, it is clear that the decision of reducing the intake capacity of the petitioner college is taken only on the ground that in the previous year the admissions were granted to 37 students in excess of capacity. The stand of the College authorities, i.e. the petitioner herein is the same as that was in Spl.C.A.No.6179/02, namely, that on account of the direction given by the Centralised Admission Committee of the State Govt the petitioner college has no option but to give admission. Be that as it may, but the fact remains that the action is a penal action and there is no observance of principles of natural justice. Mr.Patel wanted to convey that since the opportunity of

making representation by way of appeal is provided it can be said that the petitioner is given opportunity of hearing. I am afraid such contention can be accepted. While considering the similar case in the matter of Spl.C.A.No.6179/02 (G.H.Patel Engg. and Technology College vs All India Council For Technical Education) this court at para 3 of the judgment observed as under:

"3. From the tenor of the affidavit in reply it appears it is sought to be canvassed that it is a policy decision of the expert committee whereby the number of seats is reduced from 400 to 337. However, from the perusal of the earlier portion of the aforesaid affidavit in reply and more particularly the submissions referred to hereinabove it is clear that it is not on account of any revision of norms made by the Expert body the intake capacity is reduced. The only ground weighed with for the reduction of intake capacity is that in the year 2001-02 63 students were admitted in excess of intake capacity and that is made a basis for the purpose of reducing the existing capacity. I am afraid that such decision can be said to be a policy decision of an expert body. The nature of action on the face of it is a penal action on the part of respondent No.1. There is no dispute on the point that any opportunity of hearing whatsoever is not given by the respondent No.1 before passing the impugned order. It is well settled that whenever any penal action is to be taken against any person concerned, who is likely to be visited with consequences, minimum principles of natural justice of giving opportunity of being heard is required to be given. Even in few cases such opportunity is not absolutely ignored. In the given case, because of extreme urgency of circumstances it may be disposed of. No special circumstances are shown in the present case. Admittedly, only ground shown is that earlier, i.e. in the year 2001-02 since 63 students were given admission in excess of intake capacity same is made basis for the purpose of reduction of intake capacity."

4. In my view the present petition deserves to be allowed on the same reasoning in as much as that since no opportunity of hearing has been given the order, dated 3.6.02 deserves to be quashed and set aside on the ground of nonobservance of principles of natural justice. Mr.Patel submitted that since the college authorities are

giving admission to the students in excess of intake capacity, if they are permitted to continue with the same practice it might result into encouraging such illegality. I am not expressing any final view on the same. However, it is always open to the authority concerned to ensure by suitably examining the issue that the admissions are given to the students only to the extent lawfully sanctioned intake capacity. If the stand of the college authorities is that on account of directions of the Central Admission Committee of the State Govt they had no option but to give admission to the students then the respondents can also instruct the State Govt accordingly for ensuring such compliance. However, all this will be the matter of examining the facts and I leave it at that only by observing that the respondent No.1 shall be at liberty to take appropriate action after giving appropriate opportunity of hearing with a view to ensure that no student in excess of intake capacity is given admission.

5. In view of the above, the order dated 3.6.02 passed by the respondent No.1, copy whereof is at annexure "C" to the petition is hereby quashed and set aside on the ground that the same is in breach of principles of natural justice. It would be open to the respondent No.1 to give opportunity of hearing to the petitioner and other affected persons and then to take a decision afresh. However, since the question of incidentally arises as to the present intake capacity of the petitioner college, until the respondent No.1 decides after giving opportunity of hearing in accordance with law on the said aspect, it is needless to clarify that the intake capacity of the petitioner shall be governed by the sanction order of the respondent No.1 which existed prior to the impugned order 3.6.02.

6. Petition is allowed to the aforesaid extent. Rule is made absolute accordingly. There shall be no order as to costs.

4.10.02 (JAYANT PATEL,J)